

REMARKS/ARGUMENTS

Claims 1-18, 20, 22, 25-27, 29, 31, 34-36, 38 and 40 are pending. The subject requirement restricted prosecution to one of the following:

- I. Claims 1-6, drawn to a subcombination of a preader bar;
- II. Claims 7-18, 20, 22, 25-27, 29, 31, 34-36, 38 and 40 drawn to a combination of a kite powered device.

For the reasons set forth below, this restriction requirement is respectfully traversed.

The examiner argued that Groups I and II lack the same or corresponding special technical features since Group I lacks the control lines and the kite.

PCT Rule 13.2 describes the method for determining whether the requirement of unity of invention is satisfied. Unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more special technical features. The term "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions considered as a whole, makes over the prior art. The determination is made based on the contents of the

claims as interpreted in light of the description and drawings.

In the instant case, the examiner erroneously considered the control lines and the kite as being special technical features. The specification discloses that a prior art kite surfing device comprises, *inter alia*, control lines and a kite. Thus, without considering the control lines and the kite as being special technical features of the invention, both groups of claims recite the invention with the same special technical features.

Even *arguendo*, the groups are linked as combination/subcombination, the examiner's argument is inaccurate.

In establishing the criteria of distinctness between combination and subcombination, to support a requirement for restriction between combination and subcombination inventions, both two-way distinctness and reasons for insisting on restriction are necessary. The inventions are distinct if it can be shown that a combination as claimed:

1. does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), **and**

2. the subcombination can be shown to have utility either by itself or in another materially different combination.

When these factors cannot be shown, such inventions are not distinct. Where a combination as claimed does not require the details of the subcombination as separately claimed and the subcombination has separate utility, the inventions are distinct and restriction is proper if reasons exist for insisting upon the restriction, i.e., there would be a serious search burden if restriction were not required as evidenced by separate classification, status, or field of search.

This situation can be diagramed as **AB_{br}/B_{sp}**, wherein combination **AB_{br}** ("br" is an abbreviation for "broad"), and subcombination **B_{sp}** ("sp" is an abbreviation for "specific") are present. **B_{br}** indicates that in the combination the subcombination is broadly recited and that the specific characteristics required by the subcombination claim **B_{sp}** are not required by the combination claim.

In the instant case, both groups of claims recite the alleged subcombination of the spreader bar. It is respectfully submitted that the groups are not related as

combination/subcombination and thus, the restriction requirement is improper.

The examiner argued that Group II contains claims directed to more than one species of the generic invention and that they are deemed to lack unit of invention because they are not so linked to form a single general inventive concept under PCT Rule 13.1. It is respectfully submitted that the claims of the Group II define the same essential characteristics of a single disclosed embodiment of the invention, and thus, restriction therebetween should not be required. The claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition. The examiner erroneously considered the control lines and the kite leads as being special technical features. The specification discloses that a prior art kite surfing device comprises, *inter alia*, control lines, a kite and a kite leads. Thus, without considering the control lines and the kite as being special technical features of the invention, both groups of claims recite the invention with the same special technical features.

Although the restriction requirement has been respectfully traversed, pursuant to 37 CFR 1.499, Group I (Claims 1-6

and newly added claims 60-63) is provisionally elected with traverse.

For the reasons set forth above, applicant respectfully requests that the restriction requirement be withdrawn.

Respectfully Submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Luis E. Quijano) Group Art Unit: 3643
Application No.: 10/522,684) Examiner: Timothy D. Collins
Filed: July 21, 2003)
For: CONTROL APPARATUS FOR KITE) **CERTIFICATE OF MAILING**
POWERED CONVEYANCE DEVICE)
_____)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify that the attached correspondence including:

- Response to Restriction Requirement and Amendment

is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

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